3. Plaintiff was not guilty of contributory negligence in not going through the cars between him and the station platform before getting off, or in not finding the conductor, who was at the front end of the train, and requesting him to move the train until the rear car reached the platform.

NORFOLK & W. RY. CO. v. CHEATWOOD'S ADM'X.

January 12, 1905.

[49 S. E. 489.]

MASTER AND SERVANT—RAILROADS—DEATH BY WRONGFUL ACT——CONTRIBUTORY NEGLIGENCE—KNOWLEDGE OF DANGEROUS APPLIANCES — CONSTITUTIONAL PROVISION—CONSTRUCTION—INSTRUCTIONS.

1. In an action against a railroad company for the death of a "hostler," injured while riding on a tender in a switchyard, evidence *held* to justify submission to the jury of the question whether deceased was at his post of duty at the time of the injury.

2. Where a railroad company maintained a building in its switchyard at such distance from the track that a person riding on a step at the side of the tenders ordinarily used in the yard could pass in safety, the use of a tender so large that a person riding as usual would be crushed against the building was negligence.

3. In an action for death by wrongful act, an instruction that plaintiff is entitled to a sum equal to the probable earnings of deceased considering his age, business capacity, experience, habits, health, energy and perseverance, is correct as to the element of damage referred to.

4. Where a constitutional provision of another state is incorporated in the Constitution of this state, the construction placed upon the provision by the courts of such other state before its adoption here must be adopted in this state.

5. Const. sec. 162 [Va. Code 1904, p. cclix], and Acts 1901–2, p. 335, c. 322 [Va. Code 1904, p. 707, sec. 1294k], providing that a railroad employé's knowledge of defects in appliances shall not bar a recovery for injuries caused by such defects, does not do away with the defense of contributory negligence, or render knowledge of defects unimportant in determining the question of contributory negligence, but merely renders knowledge alone insufficient to defeat recovery.

6. Under these provisions the servant's knowledge of defects is to be considered in connection with all the other evidence in determining whether the servant used due care, but, as such knowledge will not alone defeat a recovery, an instruction that the defense of contributory negligence is unaffected by the statutes is too broad.

7. Instructions that defendant is entitled to make the defense of contributory negligence, and defining what constitutes contributory negligence, are sufficient to preserve defendant's right to this defense.

8. Where a railroad employé has ridden on the side of tenders past a building so close to the track that there was barely room for his body, he was not guilty of contributory negligence in trying to ride past on the side of a larger tender, unless he knew it was larger.

9. In an action against a railroad company for the death of a roundhouse "hostler" crushed to death between a building near the track and a tender on which he was riding in the usual way, but which was larger than any tender previously used in the yards, evidence *held* to justify submission to the jury of the issue of defendant's negligence.

RICHMOND, F. & P. R. CO. v. JOHNSTON et al.

January 12, 1905.

[49 S. E. 496.]

HIGHWAYS—POWER TO CONDEMN RAILROAD PROPERTY.

1. The general power to condemn land, conferred by Code 1887, secs. 1095, 1096, which authorizes the crossing of railroad tracks by a highway, is insufficient to authorize the condemnation for highway purposes of property purchased and used by a railroad company for station grounds and yards.

WARNER MOORE & CO. v. WESTERN ASSUR. CO.

January 12, 1905.

[49 S. E. 499.]

REFORMATION OF INSTRUMENT—INSURANCE POLICY—SUFFICIENCY OF EVIDENCE.

1. Evidence in a suit to reform a policy of insurance on a stock of goods, which described the goods as being in a building other than where situated, considered, and *held* sufficient to show that the error was made by mutual mistake, and to require a reformation of the policy.

NORFOLK RAILWAY & LIGHT CO. v. SPRATLEY.

January 12, 1905.

[49 S. E. 502.]

ELECTRICITY—INJURY FROM LIVE WIRE—PRESUMPTION OF NEGLIGENCE—REBUTTAL OF PRESUMPTION—EVIDENCE—SUFFICIENCY—PROXIMATE CAUSE—HARMLESS ERROR—EXPERT TESTIMONY—INSTRUCTIONS—DAMAGES.

1. Electric companies are not insurers against accidents, but they are held to a high degree of care in the construction and maintenance of their dangerous appliances.

2. The fact that a child was injured by picking up a live electric wire which had fallen to the sidewalk created a presumption of negligence on the part of the corporation owning and maintaining the wire.

3. In an action for injuries sustained by a child by picking up a live electric wire that had fallen to the sidewalk, the testimony of a lineman that he looked over the wires every day, and that between 6 and 7 o'clock in the morning of the day of the accident he had looked over the wire in question, and had found it all right, was not sufficient to remove the presumption of negligence on the part of the corporation owning and maintaining the wire.

4. The presumption of negligence which arises from an injury to a pedestrian in a public street from a broken electric wire is not overcome by testimony of